

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:P&SI:Br.8-GENIN156740-02

Date:

10/31/02

Dear [REDACTED]:

I am responding to your facsimile transmission dated October 17, 2002, as supplemented by a second facsimile dated October 21, 2002. Your inquiry relates to the federal air transportation taxes. You ask whether the Internal Revenue Service allows airlines to keep certain fees and taxes collected from the person paying for air transportation when that person does not use the air transportation. Specifically, your inquiry focuses on the Passenger Facilities Charge (PFC), the Zip tax (identified by you as "[a]pproximately \$3 as government security for airport used"), and the tax imposed by § 4261 of the Internal Revenue Code.

Regarding the PFC and the Zip tax, the IRS has no regulatory authority over these charges and no authority over airlines concerning their collection or disposition. Thus, we are unable to respond to this portion of your inquiry. Regarding the tax imposed by § 4261, we provide the following information. Section 4261(a) imposes an excise tax of 7.5 percent of the amount paid for the taxable transportation of persons. Generally, taxable transportation is transportation beginning and ending in the United States or in those parts of Canada and Mexico not more than 225 miles from the continental United States. See § 4262. Under § 4261(d), the tax is paid by the person making the payment for the taxable transportation. The person receiving the payment subject to tax collects the tax and remits the tax to the government. See § 4291. Thus, a collector may not retain amounts collected as tax.

As stated above, the § 4261 tax applies to amounts paid for taxable transportation. The fact that a person does not use the air transportation does not retroactively render the payment as being made for something other than taxable transportation. Thus, if a person pays an amount for taxable transportation where the ticket is nonrefundable and then fails to use the transportation, that person has not made an overpayment of tax and is not entitled to a refund of the excise tax paid. Conversely, if the ticket is

refundable and the person that fails to use the transportation receives a refund of the amount paid for the transportation, an overpayment of the excise tax has been made and the person that paid the tax is entitled to a refund. In such a circumstance, the collector may refund the tax paid, § 6415(d), but may not be forced to do so. If the collector elects not to refund the tax paid along with the amount paid for the transportation, the person must seek a refund from the IRS. Kaucky v. Southwest Airlines Company, 109 F.3d 349 (7th Cir. 1997). However, amounts collected as tax and remitted to the government may not be refunded to the collector, nor may the collector take those amounts as a credit, without showing that the tax has been refunded to the person from whom it was collected or obtaining the consent of that person. § 6415. Thus, a collector may not retain the § 4261 tax where the person making the payment subject to tax does not use the transportation.

If you have any questions, please contact me at [REDACTED]

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By:
Richard A. Kocak
Chief, Branch 8